



DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

[NPS-MORA-31539; PPPWMORAS1 PPMPSPD1Z.YM0000]

RIN 1024-AE66

Mount Rainier National Park; Fishing

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service proposes to remove from the Code of Federal Regulations special fishing regulations for Mount Rainier National Park, including those that restrict the take of nonnative species. Instead, the National Park Service would publish closures and restrictions related to fishing in the Superintendent's Compendium for the park. This action would help implement a 2018 Fish Management Plan that aims to conserve native fish populations and restore aquatic ecosystems by reducing or eliminating nonnative fish.

DATES: Comments must be received by 11:59 EDT on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by Regulation Identifier Number (RIN) 1024-AE66, by either of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. Follow the instructions for submitting comments.
- Mail or hand deliver to: National Park Service, Mount Rainier National Park, Attn: Superintendent, 55210 238th Avenue East, Ashford, WA 98304.

Instructions: Comments will not be accepted by fax, email, or in any way other than those specified above. All submissions received must include the words "National

Park Service” or “NPS” and must include the docket number or RIN (1024-AE66) for this rulemaking. Comments received may be posted without change to www.regulations.gov, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov and search for “1024-AE66.”

FOR FURTHER INFORMATION CONTACT: Kevin Skerl, Chief of Natural and Cultural Resources, Mount Rainier National Park, National Park Service; phone: (360) 569-2211; email: kevin_skerl@nps.gov.

SUPPLEMENTARY INFORMATION:

Background.

Significance of the Park.

Mount Rainier National Park encompasses 236,381 acres in west central Washington, on the western and eastern slopes of the Cascade Range. About 83 percent of the park is located in Pierce County and 17 percent is located in Lewis County. The park's northern boundary is approximately 65 miles southeast of the Seattle-Tacoma metropolitan area and 65 miles west of Yakima. The elevations of the park range from about 1,400 feet at the Tahoma Woods Administrative Site to 14,410 feet at the summit of Mount Rainier. About two million people visit the park annually, with most visitation (75 percent) occurring between June and September. In 1988, Congress designated approximately 97 percent (228,480 acres) of the park as wilderness under the Washington Park Wilderness Act.

The focal point of the park is Mount Rainier, a towering snow- and ice-covered volcano that is a prominent landmark in the Pacific Northwest. Mount Rainier is the second most seismically active and most hazardous volcano in the Cascade Range. The 26 major glaciers that flank the upper mountain cover 35 square miles. Steep glaciated valleys and ice carved peaks dominate the park landscape. The Carbon, Mowich, White,

West Fork White, Nisqually, South Puyallup, and North Puyallup rivers and their tributaries carry water from Mount Rainier to the Puget Sound. The Ohanapecosh and Muddy Fork Cowlitz flow into the Cowlitz River and on into the Columbia River. There are approximately 470 mapped rivers and streams, including approximately 383 perennial streams and 84 intermittent streams. With very few exceptions, park rivers and streams originate within the park. There are approximately 382 lakes and ponds, and over 3,000 acres of other wetland types (e.g., mineral geothermal springs, waterfalls) in the park. Approximately 29 of these lakes are in designated wilderness. Among those waterbodies not in wilderness are the Littorals Pond (White River watershed) and Mowich and Tipsoo lakes.

Fish Resources in the Park.

The following 15 fish species are present in the rivers, streams and lakes within the park. Of these, 8 are native and 7 are nonnative.

No.	Scientific Name	Common Name	Occurrence
1	<i>Oncorhynchus mykiss</i>	rainbow trout	Native (in some locations)
2	<i>Oncorhynchus clarkii clarkii</i>	coastal cutthroat trout	Native
3	<i>Salvelinus confluentus</i>	bull trout	Native
4	<i>Oncorhynchus kisutch</i>	coho salmon	Native
5	<i>Oncorhynchus tshawytscha</i>	chinook salmon	Native
6	<i>Oncorhynchus gorbuscha</i>	pink salmon	Native
7	<i>Prosopium williamsoni</i>	mountain whitefish	Native
8	<i>Cottus confusus</i>	shorthead sculpin	Native
9	<i>Cottus cognatus</i>	slimy sculpin	Nonnative
10	<i>Cottus rhotheus</i>	torrent sculpin	Nonnative
11	<i>Oncorhynchus clarkii bouvieri</i>	Yellowstone cutthroat trout	Nonnative

12	<i>Oncorhynchus clarkii lewisi</i>	westslope cutthroat trout	Nonnative
13	<i>Salvelinus fontinalis</i>	brook trout	Nonnative
14	<i>Gasterosteus aculeatus</i>	Alaskan stickleback, threespined stickleback	Nonnative
15	<i>Oncorhynchus nerka</i>	kokanee salmon	Nonnative

Fish populations naturally occur within the park in the nine large valley bottom rivers and their tributary junctions up to natural fish barriers. These rivers bear native fish populations of bull trout (*Salvelinus confluentus*), coastal cutthroat trout (*Oncorhynchus clarkii clarkii*), coho salmon (*O. kisutch*), rainbow (steelhead) trout (*O. mykiss*), Chinook salmon (*O. tshawytscha*), pink salmon (*O. gorbuscha*), mountain whitefish (*Prosopium williamsoni*) and shorthead sculpin (*Cottus confusus*). Nonnative sculpins present in the rivers include slimy sculpin (*C. cognatus*) and torrent sculpin (*C. rhotheus*).

Prior to stocking efforts, there were no naturally occurring fish populations in any of the approximately 382 mapped lakes and ponds in the park. With the exception of those mentioned above, most of the mapped streams were also originally fishless. Early in the park's history, the National Park Service (NPS) and others, including the state, introduced nonnative stocks of rainbow trout (*O. mykiss*), westslope cutthroat trout (*O. clarkii lewisi*), Yellowstone cutthroat trout (*O. clarkii bouvieri*), brook trout (*Salvelinus fontinalis*), and kokanee salmon (*O. nerka*) to enhance recreational fishing. According to unpublished park records, official stocking occurred from 1915 through 1964 (49 years) in 38 streams, and from 1915 through 1972 (57 years) in 44 lakes. Stocking fish resulted in reproducing populations of nonnative fish in naturally fishless lakes. It also resulted in reproducing populations of nonnative fish in some rivers and streams where they compete with native fish. Additional unauthorized introductions of nonnative fish, including threespined stickleback (*Gasterosteus aculeatus*), have occurred since stocking ended. Reproducing populations of nonnative fish are now present in approximately 35 lakes and

all of the park watersheds, including many streams and the nine major rivers.

The presence of nonnative fish in the park has had widespread adverse effects on the distribution, abundance, age structure, genetics and behavior of native fish species, amphibians and other aquatic life. Nonnative fish prey on and compete with native fish, particularly bull trout. As a result, over time, populations of native fish within and outside the park have likely diminished where brook trout and other nonnative fish populations have been established. The U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) have listed populations of bull trout, Chinook salmon, and steelhead within the park as threatened under the Endangered Species Act (ESA). In 2010, the USFWS designated approximately 30 miles of streams in the park as bull trout critical habitat. In 2015, the USFWS issued a Bull Trout Recovery Plan that identified actions the NPS should take to protect bull trout within the park.

NPS Authority to Manage Fishing.

The NPS has sole and exclusive jurisdiction over the lands and waters within Mount Rainier National Park. 16 U.S.C. 95. The park's enabling act directs the Secretary of the Interior, acting through the NPS, to make such regulations as the Secretary deems necessary or proper to care for the park, including regulations that provide against the wanton destruction of the fish and game found within the park, and against their capture or destruction for the purposes of merchandise or profit. 16 U.S.C. 92. The NPS administers the park as a unit of the National Park System and has the authority to regulate the use of the park as it considers necessary or proper. 54 U.S.C. 100751(a). This includes the authority to regulate activities on water located within the park that is subject to the jurisdiction of the United States. 54 U.S.C. 100751(b).

NPS Management Framework for Fishing.

General NPS fishing regulations are found in 36 CFR 2.3 and apply to all units of the National Park System. For example, § 2.3(d)(4) prohibits commercial fishing in NPS

units, except where specifically authorized by Federal statute. Recreational fishing is allowed within NPS areas in accordance with state law, provided that the state law does not conflict with NPS fishing regulations. 36 CFR 2.3(a). Special fishing regulations are found in 36 CFR part 7 and apply only in specific NPS units that have promulgated special regulations for this purpose. Other NPS closures and restrictions related to fishing are established by the Superintendent under his or her discretionary authority in 36 CFR 1.5. This authority allows Superintendents to close all or a portion of a park area to a specific use or activity or impose conditions or restrictions on a use or activity. Pursuant to 36 CFR 1.7(b), these actions are compiled and maintained in what is commonly known as the Superintendent's Compendium, which is typically available on the unit's website, and do not appear in 36 CFR. Actions taken by the Superintendent under the authority in 36 CFR 1.5 may not conflict with regulations found in the CFR, including the general fishing regulations in § 2.3.

NPS Management of Fishing in the Park.

Special fishing regulations for Mount Rainier National Park are found in 36 CFR 7.5(a). These regulations were issued in 1969 (34 FR 17520) and last amended in 1976 (41 FR 14863). They close the following areas of the park to all fishing: (i) Tipsoo Lake; (ii) Shadow Lake; (iii) Klickitat Creek above the White River entrance water supply intake; (iv) Laughingwater Creek above the Ohanapecosh water supply intake; (v) Frozen Lake; (vi) Reflection Lakes; and (vii) Ipsut Creek above the Ipsut Creek Campground water supply intake. 36 CFR 7.5(a)(1). Except for fishing with artificial flies, the special regulations also close the Ohanapecosh River and its tributaries to all fishing. 36 CFR 7.5(a)(2). The regulations state that there shall be no minimum size limit on fish that may be possessed. 36 CFR 7.5(a)(3). The regulations state that the daily catch and possession limit for fish taken from park waters shall be 6 pounds and 1 fish, not to exceed 12 fish. 36 CFR 7.5(a)(4).

Other closures and restrictions related to fishing appear in the Superintendent's Compendium for the park, which is available on the park's website at <https://www.nps.gov/mora/learn/management/lawsandpolicies.htm>. Several of these closures and restrictions are intended to conserve native fish species and reduce or eliminate nonnative species. The Compendium states that all native fish species caught in streams must be released, but that the retention of kokanee and brook trout (both nonnative species) is permitted with no limit. The purpose of this action is to protect native fish species by requiring catch-and-release and to reduce populations of nonnative species by allowing them to be removed from the park. The Compendium closes Fryingpan Creek above the confluence of the White River to all fishing. This closure was established to protect native fish species (bull trout, Chinook salmon, and steelhead) that are listed as threatened under the ESA. The Compendium also closes Ghost Lake and Edith Creek Basin above the Paradise water supply to protect the potable water supply for White River and Paradise. The Compendium establishes fishing seasons for streams and rivers to protect the spawning season of listed, native species. Where fishing is allowed in lakes, there are no seasonal closures because, as noted above, fish are not native to lakes within the park.

In September 2017, the NPS published a Fish Management Plan / Environmental Assessment (the Plan). The purpose of the Plan is to direct long-term management for fish within lakes, rivers and streams within the park. During the development of the Plan, the NPS solicited information from the USFWS, the NMFS, the Washington Department of Fish and Wildlife, the Washington State Historic Preservation Office, and six affiliated American Indian tribes: the Nisqually Tribe of Indians, the Muckleshoot Indian Tribe, the Cowlitz Indian Tribe, the Puyallup Tribe of Indians, the Squaxin Island Tribe, and the Confederated Tribes and Bands of the Yakama Nation. The U.S. Forest Service, Mount Baker-Snoqualmie National Forest, also submitted comments during the public scoping

period that occurred before the Plan was published. The Plan was open for a 30-day public comment period.

On August 28, 2018, the Regional Director for Department of the Interior Unified Regions 8, 9, and 10 (formerly the Pacific West Region) approved a Finding of No Significant Impact (FONSI) selecting Alternative 2 in the Plan for implementation. This alternative calls for site-specific management actions to encourage recreational fishing opportunities for nonnative species and to protect native fish and habitat. In addition to increasing recreational angling opportunities for nonnative species, the alternative calls for suppressing or eradicating nonnative fish populations through administrative actions such as gillnetting, seining, electrofishing, and piscicides in selected locations. The selected alternative is consistent with actions required by the 2015 Bull Trout Recovery Plan issued by the USFWS. The NPS expects the eradication or suppression of nonnative fish to result in the increased survival and abundance of threatened and endangered species (bull trout, chinook salmon and steelhead) and improved habitat for native species. The Plan, which contains a full description of the purpose and need for taking action, the alternatives considered, and the environmental impacts associated with the considered alternatives, and the FONSI may be viewed on the park's planning website at <https://parkplanning.nps.gov/mora> by clicking on the link entitled “2018 Mount Rainier National Park Fisheries Management Plan Environmental Assessment and Finding of No Significant Impact” and then clicking on the link entitled “Document List.”

Proposed Rule.

The proposed rule would remove special fishing regulations for the park that interfere with the successful implementation of the fish management strategy identified in the FONSI. These include the following closures and restrictions that limit the take of nonnative fish: (1) closures at Ipsut Creek and (except for artificial flyfishing) the

Ohanapecosh River; and (2) a daily catch and possession limit of six pounds and one fish, not to exceed 12 fish. Removing these closures and restrictions would create new angling opportunities for nonnative species that are currently not authorized by 36 CFR 7.5. The other closures and restrictions currently codified in the special regulations will be relocated to and maintained in the Superintendent's Compendium because either they are necessary to protect the domestic potable water supply for White River, Sunrise, Ohanapecosh, and Paradise (the closures of Frozen Lake and streams with identified water supply intakes); or to protect fragile riparian vegetation (the closures of Tipsoo Lake, Shadow Lake and Reflection Lakes). Closures and restrictions in the special regulations also apply to the take of native fish species. These will be retained or modified in the Superintendent's Compendium, consistent with the selected alternative in the FONSI, to help restore the natural abundance, diversity, dynamics, distribution, habitats and behaviors of native fish populations that were present in the park prior to the introduction of nonnative fish. The administrative flexibility offered by the Superintendent's Compendium, which in most circumstances can be modified without notice and comment rulemaking (see 36 CFR 1.5(b)), provides a feasible and responsive method to meet the strategic goals identified in the FONSI to utilize adaptive management to alter management activities when needed based on monitoring and best available science. NPS regulations at 36 CFR 1.7(b) require the Superintendent to update the Compendium at least annually. The NPS will ensure that the public has an opportunity to provide meaningful input prior to updating any closures or restrictions related to fishing in the Compendium.

Consolidating all fishing closures and restrictions in the Compendium will make them more accessible and user-friendly for the public. Instead of having to look in two different places (the special regulations in 36 CFR 7.5 and the Superintendent's Compendium on the park's website), the public would be able to find all closures and

restrictions related to fishing in one place. The NPS has already done this, informally, by producing a fishing pamphlet that is available at the park's website at <https://www.nps.gov/mora/planyourvisit/fishing-and-boating.htm>. Moving all of the closures and restrictions related to fishing into the Compendium would consolidate the official versions of them in one place for legal purposes. Centralizing them in the Compendium would increase compliance, strengthen enforcement, and decrease public confusion and frustration. The NPS routinely responds to inquiries and requests for clarification from the State of Washington and members of the public regarding fishing opportunities and rules within the park. Placing all fishing closures and restrictions in the Compendium would make it easier for visitors to understand the rules and become better stewards of fishery resource at the park. In order to direct the public to the Compendium, the NPS proposes to replace the existing language in paragraph (a) of § 7.5 with a general statement that the Superintendent will establish fishing closures and restrictions, based on management objectives described in the park's resource management plans, in accordance with the criteria and procedures in 36 CFR 1.5 and 1.7, including publication in the Superintendent's Compendium. The rule would also state that fishing in closed waters or violating a fishing restriction established by the Superintendent is prohibited. Similar language is used in the special regulations for other NPS units, including Glacier National Park (36 CFR 7.3) and Rocky Mountain National Park (36 CFR 7.7).

Compliance with Other Laws, Executive Orders and Department Policy.

Regulatory Planning and Review (Executive Orders 12866 and 13563).

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while

calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act.

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This certification is based on information contained in the economic analyses found in the report entitled “Cost-Benefit and Regulatory Flexibility Threshold Analyses: Proposed Rule to Remove Special Regulations for Fishing at Mount Rainier National Park.” The document may be viewed on the park's planning website at <https://parkplanning.nps.gov/mora> by clicking on the link entitled “2018 Mount Rainier National Park Fisheries Management Plan Environmental Assessment and Finding of No Significant Impact” and then clicking on the link entitled “Document List.”

Congressional Review Act.

This rule is not a major rule under 5 U.S.C. 804(2). This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, federal, State, or local government agencies, or geographic regions.
- (c) Does not have significant adverse effects on competition, employment,

investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act.

This rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule would not have a significant or unique effect on State, local or tribal governments or the private sector. It addresses public use of national park lands, and imposes no requirements on other agencies or governments. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630).

This rule would not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132).

Under the criteria in section 1 of Executive Order 13132, the rule would not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This proposed rule only affects use of federally-administered lands and waters. It has no outside effects on other areas. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988).

This rule complies with the requirements of Executive Order 12988. This rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation with Indian tribes (Executive Order 13175 and Department Policy).

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the criteria in Executive Order 13175 and under the Department's tribal consultation policy and have determined that tribal consultation is not required because the rule will have no substantial direct effect on federally recognized Indian tribes. During scoping for the Plan, the NPS solicited comments from six affiliated American Indian tribes: the Nisqually Tribe of Indians, the Muckleshoot Indian Tribe, the Cowlitz Indian Tribe, the Puyallup Tribe of Indians, the Squaxin Island Tribe, and the Confederated Tribes and Bands of the Yakama Nation. The NPS will continue to work with these tribes throughout the rulemaking process and implementation of the selection action in the Plan.

Paperwork Reduction Act.

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

National Environmental Policy Act (NEPA).

The NPS has prepared the Plan to determine whether this rule will have a significant impact on the quality of the human environment under the NEPA. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required because of the FONSI. A copy of the Plan and FONSI may be viewed on the park's planning website at <https://parkplanning.nps.gov/mora> by clicking on the link entitled “2018 Mount Rainier National Park Fisheries Management Plan Environmental Assessment and

Finding of No Significant Impact” and then clicking on the link entitled “Document List.”

Effects on the Energy Supply (Executive Order 13211).

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Clarity of this rule.

We are required by Executive Orders 12866 (section 1(b)(12)) and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Public Participation.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in the **ADDRESSES** section of this document.

Public availability of comments.

Before including your address, phone number, e-mail address, or other personal

identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority for part 7 continues to read as follows:

Authority: 54 U.S.C. 100101, 100751, 320102; Sec. 7.96 also issued under D.C. Code 10-137 and D.C. Code 50-2201.07.

2. In §7.5, revise paragraph (a) to read as follows:

§ 7.5 Mount Rainier National Park.

(a) *Fishing.* (1) Fishing closures and restrictions, based on management objectives for the preservation of the park's natural resources, are established by the Superintendent.

(2) The Superintendent may establish closures and restrictions, in accordance with the criteria and procedures of §1.5 of this chapter, on any activity pertaining to fishing, including, but not limited to species of fish that may be taken, seasons and hours during which fishing may take place, methods of taking, and size, creel, and possession limits.

(3) Except in emergency situations, the Superintendent will notify the public of any such closures or restrictions through one or more methods listed in §1.7 of this chapter, including publication in the Superintendent's Compendium (or written compilation) of discretionary actions referred to paragraph (b) of §1.7.

(4) Fishing in closed waters or violating a condition or restriction established

by the Superintendent under this paragraph (a) is prohibited.

* * * * *

Shannon A. Estenoz,
Assistant Secretary for Fish and Wildlife and Parks.

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